

**SAINT REGIS MOHAWK TRIBAL COURT
IN AND FOR THE SAINT REGIS MOHAWK TRIBE**

In the Matter of the ESTATE OF ██████████
SHARROW, Deceased.

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) Case No.: 18-CIV-00009
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DECISION AND ORDER

Procedural Background

On March 1, 2018, ██████████ Sharrow, granddaughter of the decedent, and ██████████ ██████████, daughter of the decedent, filed a Petition for Probate with a writing purported to be the Last Will and Testament of ██████████ Sharrow with the Court requesting Letters Testamentary to administer and distribute the decedent, ██████████ Sharrow's Estate. The Court received an additional writing purported to be the Last Will and Testament of ██████████ Sharrow submitted by ██████████ Sharrow, granddaughter of the decedent, on March 27, 2018.

The Court notes a previous land dispute regarding the validity of the writings was before this Court and dismissed based on insufficient evidence. The Court takes judicial notice of the evidence and testimony admitted during the land dispute action.¹

The Court had a status conference on April 3, 2018. ██████████ Sharrow, granddaughter of the decedent; ██████████ Sharrow, son of the decedent; ██████████ Sharrow, son of the decedent, and ██████████ ██████████, daughter of the decedent, were present and self-represented.

A hearing on the validity of the writings was scheduled for April 24, 2018.

On April 24, 2018, ██████████ Sharrow, granddaughter of the decedent, and ██████████ ██████████ Sharrow, son of the decedent, appeared and submitted to the Court a Agreement, dated April 19, 2018, signed by ██████████ Sharrow, ██████████ Sharrow, ██████████ Sharrow, and ██████████ ██████████ "bequeathing our sister ██████████ all properties."

The Court set a hearing for June 5, 2018 in order to assess the property interests held by ██████████ Sharrow, the decedent, and invited the Tribal Clerk's Office to participate.

On June 5, 2018, ██████████ Sharrow and ██████████ ██████████ appeared and were self-represented. Derrick King, Land and Estates Officer at the Tribal Clerk's Office, appeared and provided the Court with information.

¹ *Sharrow v. Sharrow*, 17-LND-00005 (Jan. 24, 2018).

Applicable Law

Saint Regis Mohawk Civil Code directs the Court to apply all “written laws adopted by the recognized governmental system of the Mohawk Tribe.”² The present matter involves a decedent’s Estate. The decedent, [REDACTED] Sharrow, was eligible for enrollment in the Saint Regis Mohawk Tribe. The Saint Regis Mohawk Tribe Probate Law provides the relevant provisions and governs this matter.

Jurisdiction

Pursuant to the Saint Regis Mohawk Tribe Probate Law, the Court “shall have personal jurisdiction to probate an estate when, at the time of death, (1) the deceased was either a Tribal Member or a person eligible for enrollment as a Tribal Member and the deceased resided or owned real or personal property located within the reservation.”³ Furthermore, “[t]he Tribal Court shall have exclusive jurisdiction to probate real property located within the reservation.”⁴

In the instant matter, the decedent, [REDACTED] Sharrow, was eligible for enrollment in the Saint Regis Mohawk Tribe and at the time of death the decedent was domiciled outside the borders of the Saint Regis Mohawk Indian Reservation. The documents provided by the Saint Regis Mohawk Tribe Tribal Clerk’s Office demonstrate that the decedent, [REDACTED] Sharrow, has an interest in real property located within the borders of the Saint Regis Mohawk Indian Reservation. Thus, the Court possesses subject matter jurisdiction over the probate matter and has exclusive jurisdiction over the real property based on the aforementioned reasoning.

DISCUSSION

In regards to the case at bar, the heirs and named beneficiaries listed in the writings purported to be the Last Will and Testament of [REDACTED] Sharrow have reached an Agreement to bequeath all properties to [REDACTED]. The Agreement, dated April 19, 2018, is notarized and signed by the known heirs and named beneficiaries of the writings submitted to the Court purported to be the Last Will and Testament of [REDACTED] Sharrow. There is no evidence that the Agreement is the result of undue influence, signed under duress, or created by fraud. Further, the Court notes prior to the signing of the Agreement, the heirs/beneficiaries had prior knowledge of the Court’s process for assessing wills and the effect a will has to the distribution of real and personal property. Thus, the Court accepts the Agreement signed by [REDACTED] Sharrow, [REDACTED] Sharrow, and [REDACTED] Sharrow and, as such, it is given full force and effect. In accordance with the terms of the Agreement, [REDACTED] is bequeathed all properties of the decedent [REDACTED] Sharrow, thus any interest [REDACTED] Sharrow, [REDACTED] Sharrow, and [REDACTED] Sharrow had in any property owned by the decedent, [REDACTED] Sharrow, by the terms of the Agreement is extinguished.

In the more usual probate case, an Administrator for the Estate of [REDACTED] Sharrow would be appointed by the Court and the probate process would be started including determining the

² SRMT Civil Code § V. 2.

³ SRMT Probate Law § 1.3 (a).

⁴ SRMT Probate Law § 1.3. (b) (1).

property owned by the decedent, [REDACTED] Sharrow. However, in the instant case, as noted by Derrick King, Land and Estates Officer at the Tribal Clerk's Office, a property file for the decedent, [REDACTED] Sharrow, does not exist. Derrick King, Land and Estates Officer at the Tribal Clerk's Office, provided the Court the following documentation in order to help the Court determine the property interest held by the decedent [REDACTED] Sharrow: (1) an unexecuted Right to Use and Occupancy Deed dated May 1996 between [REDACTED] Sharrow, party of the first part, and [REDACTED] Sharrow, party of the second part for Lot # [REDACTED] (2) a writing mortgaging the Homestead known as the [REDACTED] Estate to [REDACTED] Cook by the decedent, [REDACTED] Sharrow, that includes a handwritten note that states the amount owed was paid in full; and (3) a writing between [REDACTED] Sharrow, his wife [REDACTED] and children [REDACTED] Sharrow (the decedent), [REDACTED] party of the first part and [REDACTED] Bruce and their children [REDACTED] Bruce, [REDACTED] party of the second part.

At this time, the Court is aware that the decedent, [REDACTED] Sharrow's, parents and siblings have passed away. However, there is no evidence before the Court indicating that there are any completed or pending probate actions for [REDACTED] Sharrow or [REDACTED] Sharrow, parents of the decedent, or [REDACTED] and [REDACTED] the decedent's siblings. Due to the fact that the decedent, [REDACTED] Sharrow's, parents and siblings are listed on the written documents and no probate actions to the Court's knowledge have been commenced or completed, the exact property interest held by the decedent [REDACTED] Sharrow, cannot be determined at this point by the Court with the written documents before it. In regards to the possible interest held by the decedent, [REDACTED] Sharrow's, siblings, [REDACTED] Sharrow and [REDACTED], stated that there was an oral agreement between [REDACTED] Sharrow, the decedent's father, and the decedent, [REDACTED] Sharrow, where it was agreed that [REDACTED] Sharrow would be given the real property in the event the decedent paid it off. At this time, the Court makes no finding as to the issue raised by [REDACTED] Sharrow and [REDACTED] regarding the alleged oral contract between the decedent, [REDACTED] Sharrow, and the decedent's father, [REDACTED] Sharrow.

In the instant case, the heirs and beneficiaries of the decedent, [REDACTED] Sharrow, have agreed that [REDACTED] is to be bequeathed all properties owned by the decedent. This Agreement has been recognized and given full force and effect by the Court. However, in regards to the case at bar, the Court cannot determine the property interest held by the decedent, [REDACTED] Sharrow, thus, the Court cannot order the distribution of the property to [REDACTED] pursuant to the terms of the Agreement. For conveyance purposes the terms of the Agreement remain inoperative, or in other words does not take effect, until the Estate of [REDACTED] Sharrow is probated and any interest held by the siblings [REDACTED], [REDACTED] of [REDACTED] Sharrow or their children is determined and the distribution of the properties is ordered by this Court. This means that any interest in the real property held by the decedent [REDACTED] Sharrow, is owned by the decedent, [REDACTED] Sharrow's, Estate until further Court action.

ACCORDINGLY, IT IS HEREBY ADJUDGED AND DECREED:

1. Pursuant to the terms of the written Agreement, dated April 19, 2018, [REDACTED] [REDACTED] is recognized as the sole beneficiary of any property interest held by the decedent [REDACTED] Sharrow, however, a SRMT Right to Use and Occupancy Deed may not be issued at this time for any properties.
2. All real property of the decedent [REDACTED] Sharrow, is owned by the Estate of [REDACTED] Sharrow.
3. The probate action in the Matter of the Estate of [REDACTED] Sharrow remains as an open case and the Court appoints no acting Administrator for the Estate of [REDACTED] Sharrow.

Signed by my hand this 9th day of June, 2018.



Carrie E. Garrow, Chief Judge
Saint Regis Mohawk Tribal Court